

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6524
PETITION OF DENNIS CONNORS AND REGINA REILLY**

OPINION OF THE BOARD
(Hearing Held: July 12, 2017)
(Effective Date of Opinion: July 21, 2017)

Case No. A-6524 is an application by Dennis Connors and Regina Reilly (the "Petitioners") for variances necessary for proposed improvements to their home. The proposed second-story addition requires a variance of eight (8) feet as it is within seventeen (17) feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance. In addition, the proposed covered front porch requires a variance of seven (7) feet as it is within nine (9) feet of the front lot line. The required setback is sixteen (16) feet, in accordance with Sections 59-4.4.9.B.2 and 59-4.1.7.B.5.a.i of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, July 12, 2017. Mr. Connors, who is an architect, appeared at the hearing pro se.

Decision of the Board: Variances **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot P47, Block 19, American University Park Subdivision located at 4842 Park Avenue, Bethesda, Maryland, 20816, in the R-60 Zone.
2. The house on the subject property was built in 1948, and was purchased by the Petitioners in 2012. The Petitioners state that it "has not changed since its original configuration, which results in non-conforming front setbacks." The Petitioners further state in their Justification Statement that "[t]he front setback from the property line to the existing house is 17'-0" and to the existing porch is 9'-0"." See Exhibit 3.
3. The Justification Statement explains that Park Avenue, the street on which the existing house is located, has a 90' right-of-way that was established when the street was planned in 1899, before enactment of the first Montgomery County Zoning Ordinance. The Petitioners state that this "result[s] in our unusual condition of having a 17' front

setback with a front yard of over 31'." See Exhibits 1 and 3. At the hearing, Mr. Connors testified that the County's Department of Permitting Services was surprised by the difference between the location of the existing house and the setbacks required by the Zoning Ordinance.

4. The Justification Statement submitted by the Petitioners indicates that the existing house has a second story, but that the ceilings of that story are very low, only 6'-8" at their highest point. The Petitioners assert that this causes the two upstairs bedrooms to "have a significant loss of habitable space due to eaves and the habitable space hav[ing] a very low ceiling height of 6'-8". They are proposing to remove the existing second floor and to "build a new 2nd floor without eaves but in the same footprint as the original 2nd floor." They explain that their "plans call to make the space on the second floor more habitable with no eaves and a higher than 6'-8" ceiling height. The plans call for a total building height of 25'-6", well under the 35'-0" allowable height." See Exhibit 3. Mr. Connors confirmed this in his testimony.

5. In addition to asserting that the proposed construction uses an existing legal nonconforming structure, the Justification Statement asserts that the proposed construction substantially conforms with the established traditional development pattern of the street and neighborhood, stating that of the 16 houses (including the subject property) on the same side of the street as the subject property, 11 are two-stories, and that "of the five houses across the street and confronting the subject property, four are two stories." The Statement further indicates that "the subject property already has a second story." See Exhibit 3. At the hearing, Mr. Connors supplemented this, testifying that the houses on the two neighboring properties are set back the same distance from the property line as the house on the subject property, and that the houses on the next two properties, farther out, are closer to the property line than the house on the subject property. The Zoning Vicinity Map appears to confirm this. See Exhibit 8.

6. Mr. Connors testified that there is a WSSC easement across a portion of his rear yard, and that the houses across the street and behind the subject property are set on hills. See Exhibit 5(i). He testified that you cannot get a regular-sized bed up to the second floor using the existing turned stairway, and that he intends to build out two to three feet from the porch to improve access to the second floor. See Exhibits 5(k) and (l). He testified that the renovation will add less than 500 square feet of habitable space to his home.

7. The record contains five letters of support for the proposed construction from the Petitioners' neighbors, and no letters of opposition.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;

Based on the Justification Statement submitted by the Petitioners, the Board finds that the existing house has not been altered since it was originally constructed in 1948, and does not conform to the required front setback (including the required porch setback) required by the current Zoning Ordinance. Thus the Board finds that the existing house is a nonconforming structure. Because the proposed construction uses the existing house, the Board finds that the requested variances satisfy Section 59-7.3.2.E.2.ii of the Zoning Ordinance. See Exhibit 3.

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the evidence submitted by the Petitioners, that their house currently has a second story and that most of the surrounding properties on their street have second stories. The Board further finds that the houses flanking the subject property are setback a similar distance from the property line as the Petitioners' house. Thus the Board finds that the development the Petitioners propose substantially conforms with the established historic or traditional development pattern of their street.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the existing house was built in 1948, and that the Petitioners purchased the property in 2012. Thus the Board finds that the Petitioners took no actions to create the unusual characteristics of this property.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the testimony of the Petitioner and the Justification Statement in the record at Exhibit 3, that the requested variances are the minimum necessary to allow the proposed construction of these modest improvements to proceed. The Board further finds that compliance with the required front setback would pose a practical difficulty for the Petitioners, since without the grant of these variances, this house could not be improved in its current location. Thus the Board finds that the grant of these variances is the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the proposed construction will continue the residential use of this property, consistent with the recommendations of the Bethesda Chevy Chase Master Plan, which seeks to "[p]rotect the high quality residential communities throughout the Planning Area" and to "[r]econfirm the zoning for the extensive single-family detached residential areas."

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

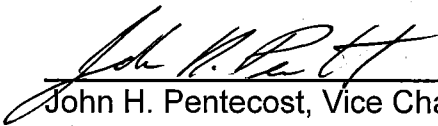
The Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties since it will maintain the existing separation between properties, and will not increase the footprint of the existing house. In addition, the Board notes that the record contains letters of support for the proposed construction from several neighbors, further buttressing this finding.

Accordingly, the requested variances necessary to allow the proposed construction of a second floor addition over an existing first floor and the construction of a covered front porch are **granted**, subject to the following conditions:

1. Petitioners shall be bound by their testimony and by the exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.
2. Construction shall be according to Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Edwin S. Rosado, with Stanley B. Boyd and Bruce Goldensohn in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of July, 2017.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.